

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 201905887	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/03/2019 1:50 AM	Location of Incident: 3856 10th Avenue	Precinct: 34	18 Mo. SOL 1/3/2021	EO SOL 8/20/2021	
Date/Time CV Reported Fri, 07/05/2019 5:57 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 07/05/2019 5:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Vito Guagenti	00424	949067	034 PCT
2. POM Michael Serrano	12172	961273	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Vito Guagenti	Abuse: Police Officer Vito Guagenti stopped § 87(2)(b)	
B.POM Michael Serrano	Abuse: Police Officer Michael Serrano stopped § 87(2)(b)	
C.POM Vito Guagenti	Abuse: Police Officer Vito Guagenti frisked § 87(2)(b)	
D.POM Vito Guagenti	Abuse: Police Officer Vito Guagenti searched § 87(2)(b)	
E.POM Vito Guagenti	Abuse: Police Officer Vito Guagenti failed to provide § 87(2)(b) with a business card.	
F.POM Michael Serrano	Abuse: Police Officer Michael Serrano failed to provide § 87(2)(b) with a business card.	

Case Summary

On July 05, 2019, § 87(2)(b) filed the following complaint with the CCRB online.

At approximately 1:50 a.m. on July 03, 2019, § 87(2)(b) and § 87(2)(b) were sitting inside the Floridita Restaurant at 3856 10th Avenue in Manhattan when Police Officer Vito Guagenti and Police Officer Michael Serrano, both of the 34th Precinct, walked into the establishment. The officers approached and stopped § 87(2)(b) and PO Guagenti asked him for his identification (**Allegation A and B: Abuse of Authority: Stop:** § 87(2)(g) PO Guagenti then proceeded to frisk § 87(2)(b) and lift his shirt, exposing his stomach (**Allegation C: Abuse of Authority: Frisk:** § 87(2)(g) and **Allegation D: Abuse of Authority: Search:** § 87(2)(g) PO Guagenti and PO Serrano then left the establishment, but did not provide § 87(2)(b) with their business cards (**Allegation E and Allegation F: Abuse of Authority: Failure to provide RTKA Card:** § 87(2)(g)

The investigation obtained video footage from the Floridita Restaurant (**Board Review 01 and 02**) and summarized these videos (**Board Review 03 and 04**). The investigation also obtained body-worn camera footage from PO Guagenti and PO Serrano (**Board Review 05 and 06**) and prepared summaries of this footage as well (**Board Review 07 and 08**).

Findings and Recommendations

Allegation A: Abuse of Authority: Police Officer Vito Guagenti stopped § 87(2)(b)

Allegation B: Abuse of Authority: Police Officer Michael Serrano stopped § 87(2)(b)

Allegation C: Abuse of Authority: Police Officer Vito Guagenti frisked § 87(2)(b)

Allegation D: Abuse of Authority: Police Officer Vito Guagenti searched § 87(2)(b)

§ 87(2)(b) provided an in-person statement on July 25, 2019 (**Board Review 09**) and § 87(2)(b) provided a statement over the phone on October 09, 2019 (**Board Review 10**). PO Serrano provided a statement on December 24, 2019 (**Board Review 11**) and PO Guagenti provided a statement on January 14, 2020 (**Board Review 12**).

It was undisputed that PO Guagenti and PO Serrano stopped § 87(2)(b) and PO Guagenti patted § 87(2)(b)'s pants pockets down and then lifted § 87(2)(b)'s shirt up, exposing his bare stomach.

§ 87(2)(b) stated that as he and § 87(2)(b) entered the restaurant, an employee approached them, and asked for § 87(2)(b)'s ID. She went into her bag to get her wallet, and while she did this, the employee searched her bag. The employee then gestured for § 87(2)(b) to put his arms up and moved forward to presumably pat him down, at which point § 87(2)(b) told the employee not to search him and that he would leave if the search was required. The employee backed away. § 87(2)(b) was under the impression that the employee saw a miniature Lieutenant's shield approximately the size of a Quarter (**Board Review 13**) that was pinned inside his wallet, although § 87(2)(b) and the bouncer did not discuss it at all.

§ 87(2)(b) and § 87(2)(b) ordered food and had been sitting at a table for approximately 30 minutes when PO Guagenti and PO Serrano approached. PO Guagenti asked if he could speak to § 87(2)(b) and told him to come down to the lower level where the officers were standing, which he did. PO Guagenti immediately asked § 87(2)(b) if he was a cop and § 87(2)(b) said no. He then asked § 87(2)(b) to see his identification. § 87(2)(b) opened his wallet.

PO Guagenti saw the miniature shield and § 87(2)(b) showed him his LBA card and then gave him his driver's license. PO Guagenti then asked § 87(2)(b) if he had anything to hide and § 87(2)(b) said no again. PO Guagenti responded, "How come you didn't let the guy search you then?"

PO Guagenti then told § 87(2)(b) to put his hands up, which § 87(2)(b) did. PO Guagenti grabbed § 87(2)(b) around his waist and put his thumbs approximately one inch into § 87(2)(b)'s waistband. He then told him to turn around and did the same thing on that side.

§ 87(2)(g) She stated that she did not hear § 87(2)(b) tell the employee he was a police officer or hear any discussion between PO Guagenti and § 87(2)(b) about § 87(2)(b) saying he was a police officer.

PO Guagenti stated that he and PO Serrano received a job on the tablet in their car about a disorderly person at 3856 10th Avenue that refused to be searched at the door of a restaurant and who said he was a police officer. When they got to the location, PO Guagenti spoke with a security guard, who told him that when § 87(2)(b) walked in, he said, "Don't touch me. I don't want to be searched. I'm a police officer." He then took out a "mini shield" and walked into the establishment without saying anything else. The security guard did not know if § 87(2)(b) had a firearm or any weapons on him, so they called the police.

The security guard pointed out § 87(2)(b) and § 87(2)(b) and PO Guagenti and PO Serrano walked up to them PO Guagenti stopped § 87(2)(b) solely based on the bouncer's statements. PO Guagenti thought it was suspicious that § 87(2)(b) did not want to be checked at the door and thought it might mean he had a weapon on his person.

PO Guagenti asked § 87(2)(b) if he was a police officer or if he told the bouncer he was an officer. § 87(2)(b) told him he was not a police officer and denied telling the bouncer he was an officer, but he told the bouncer that his brother was a police officer. He said he refused to be searched at the door because he did not think it was necessary.

PO Guagenti then patted § 87(2)(b) down around his waist. When he patted down § 87(2)(b)'s waist, he did not feel anything that he believed to be a weapon. PO Guagenti did not observe anything on § 87(2)(b)'s person that indicated he might have a weapon and frisked him solely based on the information provided by the bouncer.

Initially, PO Guagenti did not recall if he lifted up § 87(2)(b)'s shirt and did not recall any reason he had to lift § 87(2)(b)'s shirt above his waist. After being shown his body-worn camera, PO Guagenti acknowledged that he lifted § 87(2)(b)'s shirt above his waist and stated that he did so to check for weapons. It was the same concern for weapons that led to the frisk.

PO Serrano's statement was generally consistent with PO Guagenti's.

Surveillance video from the restaurant (**Board Review 01**) shows that when § 87(2)(b) walks into the restaurant, a bouncer appears to reach his hands toward § 87(2)(b) to pat him down, but § 87(2)(b) quickly moves away from the bouncer. § 87(2)(b) then takes his wallet out and quickly flips it open, showing the bouncer something inside the wallet. § 87(2)(b) then walks inside the restaurant, without being frisked or searched by the bouncer. A second surveillance video (**Board Review 02**) shows PO Guagenti and PO Serrano approach § 87(2)(b) and § 87(2)(b) at their table. PO Guagenti pats down § 87(2)(b) and lifts his shirt above his waist,

briefly exposing his bare stomach. § 87(2)(b) appears to show PO Guagenti something inside his wallet.

The CCRB obtained audio of the 911 call made by the bouncer in Spanish (**Board Review 14**), which was translated and summarized (**Board Review 15**). In the call, the bouncer tells the 911 operator that § 87(2)(b) would not let him search him and also showed him a badge that did not look like a real police shield. He tells the operator that he thought § 87(2)(b) was impersonating an officer.

PO Guagenti's BWC (**Board Review 05**) shows PO Guagenti tell § 87(2)(b) to put his hands up and then pat him around the waist. He lifts his shirt, exposing part of § 87(2)(b)'s skin. He then asks § 87(2)(b) why he refused to be searched if he had nothing on him. § 87(2)(b) PO Guagenti tells § 87(2)(b) that there are a lot of problems in bars and clubs like the Floridita restaurant and everyone gets searched in these establishments. § 87(2)(b) asks PO Guagenti if he looks like a thug to him, and PO Guagenti says, "I didn't say you looked like anything, but when people come in and say 'don't search me' and you're showing a shield and saying you're a cop even though § 87(2)(b) a cop." § 87(2)(b) tells PO Guagenti that he did not say he was a cop.

In order to stop a person, a police officer must have reasonable suspicion that the person has committed, is committing, or is about to commit a crime. Additionally, an officer has the authority to frisk an individual if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed. Innocuous behavior alone will not provide founded or reasonable suspicion. People v. DeBour, 40 N.Y. 2d 210 (1976). (**Board Review 16**).

According to Section 26 of Article 190 of the New York State Penal Code, a person is guilty of criminal impersonation in the first degree when he: Pretends to be a police officer or a federal law enforcement officer or wears or displays without authority, any uniform, badge or other insignia or facsimile thereof, by which such police officer or federal law enforcement officer is lawfully distinguished or expresses by his or her words or actions that he or she is acting with the approval or authority of any police department or acting as a federal law enforcement officer with the approval of any agency that employs federal law enforcement officers as enumerated in section 2.15 of the criminal procedure law (**Board Review 17**).

According to Patrol Guide Procedure 212-11, when a frisk reveals an object that the member of the service reasonably suspects may be a weapon, the member of the service may search only those interior portions of the stopped person's clothing to remove the weapon (**Board Review 18**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E: Abuse of Authority: Police Officer Vito Guagenti failed to provide § 87(2)(b) with a business card.

Allegation F: Abuse of Authority: Police Officer Michael Serrano failed to provide § 87(2)(b) with a business card.

It was undisputed that PO Guagenti and PO Serrano failed to provide § 87(2)(b) with a business card after the officers stopped him and PO Guagenti frisked and searched him. PO Guagenti stated he did not have any cards on him and would not have given § 87(2)(b) one if he had, because § 87(2)(b) had already told the bouncers he was a police officer and used a mini shield to support that claim. PO Guagenti did not want to provide him with more materials to help him impersonate a police officer. PO Guagenti could not recall why he did not have any contact cards with him.

PO Serrano had business cards with him. Initially, PO Serrano did not provide a specific reason why he did not give § 87(2)(b) a business card and said he believed that officers were supposed to give contact cards to individuals they stop in relation to an investigation. He then said that since § 87(2)(b) had allegedly told the bouncer he was an officer; PO Serrano did not want to give him a business card that could help him claim he was an officer in the future.

According to Section 14-174 of the New York City Administrative Code, as well as Patrol Guide Procedure 203-09, police officers are required to offer a business card to individuals after stops where a reasonable person would not feel free to end the encounter, frisks, and searches of persons (**Board Review 19** and **20**).

§ 87(2)(g)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the second CCRB complaint to which § 87(2)(b) has been a party (**Board Review 21**).
 - § 87(2)(b)
- PO Guagenti has been a member of service for nine years and has been the subject in 11 CCRB complaints and 21 allegations, none of which were substantiated. § 87(2)(g)
- PO Serrano has been a member of service for four years and has been a subject in four CCRB complaints and eight allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming unspecified injuries and seeking § 87(2)(b) as redress (**Board Review 22**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 10

Investigator:	<u>Matthew Corwin</u>	<u>Inv. Corwin</u>	<u>09/09/2020</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>9/10/2020</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date